



0000119535

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION

DEC 18 12 39 PM '98

DOCUMENT CONTROL

JAMES M. IRVIN
Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

DOCKET NO. T-01051-98-0731

IN THE MATTER OF THE PETITION
OF U S WEST COMMUNICATIONS,
INC. FOR APPROVAL OF CIVANO
LAND DEVELOPMENT AGREEMENT.

DOCKET NO.

APPLICATION FOR COMMISSION
APPROVAL OF LAND DEVELOPMENT
(CONSTRUCTION) AGREEMENT PURSUANT
TO A.A.C. R14-2-506

Pursuant to A.A.C. R14-2-506 and its tariff governing construction charges and other special charges issued on October 18, 1995 ("Tariff"), U S WEST Communications, Inc. ("USWC") petitions the Arizona Corporation Commission ("Commission") for an order approving an agreement between USWC and The Community of Civano, LLC ("Developer") for the construction of telephone facilities. In support of this application, USWC provides the following information:

1. USWC is a public service corporation incorporated under the laws of the State of Colorado.

2. USWC provides local exchange telecommunications service, intraLATA toll services and other telecommunications services within its service territory in the State of Arizona, subject to regulation by the Commission.

1 3. On September 23, 1998, Developer and USWC entered into
2 a preferred marketing agreement ("Agreement") for USWC to
3 construct and provide distribution facilities adequate to serve
4 the Development. A copy of the Agreement is attached and
5 incorporated as Exhibit 1.

6 4. As stated in the Agreement, Developer plans to
7 construct a development known as the Community of Civano,
8 consisting of approximately 814 acres of real property under
9 trust to First American Title Company, and an additional 314
10 acres as optioned by the City of Tucson for future purchase upon
11 which a planned community ("Development") is located in Pima
12 County, Arizona. A legal description of the Development is
13 contained in Exhibit A of the Agreement.

14 5. A.A.C. R14-2-506 and the Tariff provide the
15 requirements for written construction agreements between an
16 applicant for service and a telecommunications company. Pursuant
17 to these requirements, the main provisions of the Agreement are
18 summarized as follows:

19 (a) The Agreement will remain in full force and effect
20 for a period of ten (10) years. Upon any termination or
21 expiration of the Agreement, any installation of facilities
22 remaining may be performed by USWC, at USWC's option. Such
23 installation shall be subject to the Agreement notwithstanding
24 any termination or expiration.

25 (b) Developer will endorse USWC as the preferred
26 provider and vendor of choice of telecommunications services to

1 the Development's residents and business. Developer will
2 purchase for its own use services from USWC during the term of
3 the Agreement. Developer will actively promote and market
4 services available from USWC, including working with USWC to
5 establish a referral arrangement, creating a Developer sales
6 center and model homes that accommodate USWC products, services,
7 and literature, and participating in periodic training.

8 (c) Developer will take reasonable precautions to
9 notify the Development of the location of USWC facilities and
10 equipment and to notify USWC of any underground construction in
11 the Development. Developer will promptly repair any damage to
12 USWC facilities and equipment caused by Developer or reimburse
13 USWC for its repair costs.

14 (d) USWC and Developer have agreed that no initial
15 payment will be required for installation of USWC distribution
16 facilities and feeder facilities in the Development. In lieu of
17 an initial payment, certain specified payment provisions will
18 apply. Any construction requested by Developer other than the
19 construction of the distribution facilities and feeder facilities
20 by USWC shall be subject to additional charges as provided in
21 USWC's tariffs or other applicable charges, and are not subject
22 to refund. USWC and Developer have further agreed that the
23 deferment of prepayment by Developer shall be contingent upon
24 approval by the Arizona Corporation Commission of USWC's request
25 to waive the normal Land Development Agreement requirement for
26 prepayment.

1 (e) The Agreement does not abate any zone construction
2 charges that may be payable by individual subscribers under USWC
3 tariffs nor relieve such subscribers from their responsibility
4 for other appropriate charges under USWC tariffs. Individual
5 subscribers are responsible for applicable installation charges
6 and/or other regular monthly charges for telephone service as
7 provided in USWC tariffs or other applicable charges.

8 (f) The Agreement does not guarantee, reserve or
9 provide for central office equipment or any distribution and
10 feeder facilities, and any limitations in central office capacity
11 will be resolved by USWC in accordance with its standard
12 practices and procedures. Reimbursement of costs under the
13 Agreement does not vest ownership of the facilities in the
14 Developer or any subscribers. Ownership of the facilities
15 installed under the Agreement remains the sole and exclusive
16 property of USWC.

17 6. In accordance with A.A.C. R14-2-506 and the Tariff,
18 USWC submits that this Agreement does not discriminate against
19 any other telecommunications carrier or consumer and is
20 consistent with the public interest.

21 7. The terms of the Agreement are consistent with
22 applicable state law and the rules and regulations of the
23 Commission.

24 8. Because the Agreement was reached through voluntary
25 negotiations, USWC requests that the Commission issue an Order
26

1 approving the Agreement summarily and without hearing at the
2 earliest possible date.

3 9. All communications regarding this Application should be
4 addressed to the following representatives:

5 Vern Braaksma	The Community of Civano, LLC
6 U S WEST Communications, Inc.	ATTN: Lawrence P. Lamy
6 5090 North 40 th Street	6280 South Campbell Avenue
7 Room 270	Tucson, Arizona 85706
7 Phoenix, Arizona 85018	

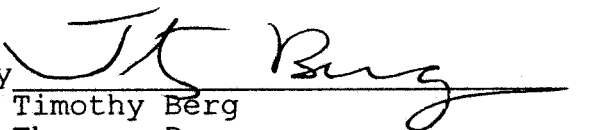
8
9 CONCLUSION

10 For the foregoing reasons, USWC respectfully requests that
11 the Commission expeditiously process this matter without hearing
12 and issue an Order grant the Application in its entirety.

13 DATED this 9th day of December, 1998.

14 FENNEMORE CRAIG, P.C.

15
16
17 By


18 Timothy Berg
18 Theresa Dwyer
18 3003 North Central, Suite 2600
19 Phoenix, AZ 85012-2913
20 Attorneys for
20 U S WEST Communications, Inc.

21 ORIGINAL and ten copies of
22 the foregoing filed this 9th
22 day of December, 1998, with:

23 Docket Control
24 ARIZONA CORPORATION COMMISSION
24 1200 W. Washington
25 Phoenix, Arizona 85007

26

1 COPY of the foregoing hand delivered
this 9th day of December, 1998, to:

2 Paul Bullis, Chief Counsel
3 Legal Division
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Ray Williamson, Acting Director
8 Utilities Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington
11 Phoenix, Arizona 85007

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

JS Burg

1

PREFERRED MARKETING AGREEMENT

This Agreement, entered into as of this ____ day of _____, 1998, is by and between The Community of Civano, LLC ("DEVELOPER"), a _____ limited liability company and U S WEST Communications, Inc., a Colorado corporation and its affiliates ("U S WEST").

WHEREAS, the DEVELOPER plans to construct a development known as The Community of Civano, consisting of approximately 814 acres of real property under trust to First American Title Co. no. 4717 and an additional 314 acres as optioned by the City of Tucson for future purchase upon which a planned community ("Community") is located in Pima County, in the State of Arizona, the legal description of which is set forth in Exhibit A and is hereby incorporated by reference (the "Development"); and

WHEREAS U S WEST is in the business of providing telecommunications services; and

WHEREAS, the DEVELOPER has requested U S WEST to provide distribution facilities adequate to serve the Development.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, it is hereby agreed by U S WEST and the DEVELOPER as follows:

1. DEFINITIONS.

Access Line: The telecommunications circuit, for voice and data transmission, that extends from the customer's (subscriber's) termination point to a central office.

Central Office: A switching unit in a telephone system, providing service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting access lines.

Distribution Facilities: All telephone plant between the feeder facilities and the customer's termination point.

Feeder Facilities: The telephone plant between the central office and the distribution facilities.

Services: shall mean the telecommunications services available from U S WEST from time to time and related products and equipment on the terms provided herein.

Tariff: A document filed by U S WEST with the Public Utilities Commission which lists the telecommunication services and products offered by U S WEST and gives a schedule of rates for those services and products.

2. **TERM.** This Agreement shall begin on the date first above written, subject to the contingency provided in Section 3.2 below, and remain in full force and effect for a period of ten (10) years. Thereafter, upon any termination or expiration of this Agreement, any installation of facilities remaining to be performed may be performed by U S WEST, at U S WEST's option, and such installation shall be subject to this Agreement notwithstanding any termination or expiration.

3. LAND DEVELOPMENT AGREEMENT; CONTINGENCY.

3.1 U S WEST is required by certain tariffs and rules of the Arizona Corporation Commission (commonly referred to as the Land Development tariffs) to require developers or builders in new housing developments to pay U S WEST in advance its costs for installing Facilities in new housing developments. Subject to the contingency provided below, U S WEST and DEVELOPER agree that no initial payment will be required for installation of U S WEST Distribution Facilities and Feeder Facilities in the Community. In lieu of an initial payment, the following payment provisions will be in effect: On every third anniversary of the date first above written, a determination will be made of the amount, if any, that DEVELOPER will be responsible for reimbursements to U S WEST as follows:

(a) If the total number of Access lines projected in the Development, as determined by U S WEST, equals or exceeds the total number of lots within the Development (see Exhibit B, (Civano Unit Build-Out Schedule), no payment shall be due from DEVELOPER to U S WEST.

(b) If the total number of Access Lines in the Development is less than the total number of lots projected on Exhibit B, the DEVELOPER shall pay \$393.33 multiplied by the number of total lots in the Development less the total number of Access lines in the Development to reimburse U S WEST for the Distribution and Feeder Facilities. U S WEST will invoice the DEVELOPER for the amount due and the amount shall be paid in full within thirty (30) days from the invoice date. This amount will be non-refundable regardless of further Access Lines that may be added in the Development after the invoice date.

3.2 The effectiveness of this Agreement shall be contingent upon approval by the Arizona Corporation Commission of a request by U S WEST to waive the normal Land Development Agreement requirement for prepayment.

4. PREFERRED PROVIDER ARRANGEMENT.

4.1. DEVELOPER will endorse U S WEST as the exclusive preferred provider and vendor of choice of Services to the Community's residents and businesses. DEVELOPER will not enter into any other endorsement agreement with another telecommunications provider for the Development including, but not limited to, revenue sharing agreements, during the term of this Agreement.

4.2. Developer will purchase for its own use Services from U S WEST during the term of this Agreement. This does not require the replacement of any existing telephone equipment currently in use.

4.3. Developer will actively promote and market the Services available from U S WEST.

4.4. Developer will work cooperatively with U S WEST to establish a referral arrangement for residents and businesses to contact or be contacted by a U S WEST consultant prior to occupancy and on an on-going basis.

4.5. Developer will create, in cooperation with U S WEST, a DEVELOPER sales center and model homes to accommodate:

- demonstration of U S WEST Services
- availability of product and service literature
- availability of U S WEST branded materials
- telephone connection to U S WEST sales/service consultants

U S WEST shall provide DEVELOPER, at no cost, marketing and collateral materials in connection with the Services.

4.6. Developer will allow U S WEST, at least once per year, to train DEVELOPER on-site sales representatives to appropriately represent U S WEST Services. The training will allow the Community sales force to properly represent the U S WEST Services and then to hand off the customer to U S WEST for order processing.

4.7. DEVELOPER will take all reasonable precautions to notify its residences, contractors, agents or employees of the location of U S WEST's facilities and equipment and promptly notify U S WEST of any underground construction in the vicinity of the Community. DEVELOPER shall promptly repair, to the reasonable satisfaction of U S WEST, any damage to the facilities and equipment caused by DEVELOPER, its contractors, agents or employees, or, at the option of the DEVELOPER, reimburse U S WEST for the costs incurred by U S WEST in repairing such damage.

4.8. DEVELOPER will place, install, operate, maintain, repair, and replace all inside wire in DEVELOPER's offices to meet the standards established by U S WEST to adequately support digital communications services in accordance with the Letter of Agreement agreed to by Lawrence P. Lamy, authorized representative of The Community of Civano, on June 8, 1998.

5. **RELATIONSHIPS BETWEEN PARTIES.** U S WEST is the provider of the Services to the Community, under the terms and conditions of applicable Tariffs, contracts, and this Agreement. The relationship of U S WEST and the DEVELOPER shall at all times be that of independent contractors. Except as may be expressly stated herein, neither party is an agent of the other.

6. **REVIEW AND ACCEPTANCE.** U S WEST may audit performance by DEVELOPER of its obligations hereunder. U S WEST shall notify DEVELOPER in writing if the DEVELOPER's performance does not conform to this Agreement. DEVELOPER shall correct such non-conforming performance within fifteen (15) days from such notification or such longer time period as is mutually agreed upon. U S WEST shall not waive any rights and remedies which U S WEST has or may have under this Agreement or under law by virtue of any failure to conduct an audit or failure to identify any non-conforming performance by DEVELOPER hereunder.

7. **SUBSCRIBER OBLIGATIONS.** The provisions of this Agreement for Distribution and Feeder Facilities shall not be construed to satisfy any Zone Construction charges which may be payable by the individual subscribers as required by Tariff. The DEVELOPER shall not represent that this Agreement for Distribution and Feeder Facilities alleviates the individual subscriber's responsibility to pay other appropriate charges when required by Tariff.

8. **COORDINATION.** The parties shall, insofar as possible, coordinate and cooperate fully in their work, and without limiting the generality of the forgoing, the DEVELOPER shall supply U S WEST with such preliminary plans, plats, paving and grading plans and other information as U S WEST may reasonably request for construction of Distribution and Feeder Facilities. Upon receipt of such required information, U S WEST shall prepare the plans and designs and provide same to the DEVELOPER who shall review same and notify U S WEST of any necessary changes/revisions to the appropriate U S WEST representative within ten (10) days after DEVELOPER receives the plans and designs. U S WEST will complete its work within ONE HUNDRED (100) DAYS after the DEVELOPER has provided proper trench for facilities.

9. **RIGHT OF WAY.** Any reasonable easements, rights-of-way, or property required by U S WEST in the Development for the facilities being provided hereunder shall be recorded and furnished promptly by the DEVELOPER without cost or restriction to U S WEST. The DEVELOPER shall clear all required easements or rights-of-way in the Development within six inches of final grade by the U S WEST construction start work date.

10. **ADDITIONAL CHARGES.** Any type of construction requested by the DEVELOPER other than the construction of the Distribution and Feeder Facilities by U S WEST pursuant to this Agreement shall be subject to additional charges as provided in Tariffs or other applicable charges, and such charges shall not be subject to refund.

11. **OWNERSHIP.** The execution of this Agreement does not guarantee, reserve or provide for Central Office equipment nor any Distribution and Feeder Facilities and any limitations in the central office capacity shall be resolved by U S WEST in accordance with its standard practices and procedures. Reimbursement of costs, as described in Section 4 above to U S WEST by the DEVELOPER, does not vest ownership of the facilities in the DEVELOPER or any subscribers, and ownership of the facilities installed hereunder is and shall at all times remain the sole and exclusive property of U S WEST. Individual subscribers are wholly responsible for applicable installation charges and/or the regular monthly charges for telephone service as provided in the Tariffs or other applicable charges.

12. **ASSIGNMENT.**

12.1. U S WEST may, without the DEVELOPER's consent, assign this Agreement to any subsidiary, parent or affiliate of U S WEST.

12.2. The DEVELOPER may make assignments limited solely to monies due or to become due hereunder, if any. It is expressly agreed that any such assignment of monies shall be void to the extent that it attempts to impose upon U S WEST obligations to the assignee in addition to the payment of such monies or in addition to those already contained in this Agreement. Any assignment or attempted assignment under this subsection does not relieve the DEVELOPER of its obligations under this Agreement, including its obligations of payment in accordance with Section 4, Payments.

12.3. This Agreement shall inure to the benefit of and be binding upon the successors in interest and permitted assignees of the parties hereto.

13. **EXCESS CAPACITY.** U S WEST reserves the right to construct excess capacity into the facilities being constructed pursuant to this Agreement. The additional costs of the excess facilities are not included in the charges set forth in this Agreement; and the DEVELOPER will not be liable for such additional costs. In the event that additional persons apply for service subsequent to the construction of facilities pursuant hereto, U S WEST shall charge to such subsequent applicants, fees and construction costs under applicable Tariffs without refund to the DEVELOPER, for costs not part of this Agreement.

14. **GOVERNING LAW, MEDIATION AND BINDING ARBITRATION.**

14.1. This Agreement and work performed under this Agreement shall be governed by and interpreted or construed in accordance with the laws of the state of Arizona.

14.2. If any claim, controversy or dispute arises and said claim, controversy or dispute cannot be settled through negotiation, the parties agree to first attempt, in good faith, to settle the claim, controversy or dispute through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration, as provided herein. Should such mediation fail to settle such controversy, claim or dispute, the parties agree that resolution shall be reached through binding arbitration. The Federal Arbitration Act, 9 U. S. C., Articles 1 to 16, not state law, shall govern the arbitrability of all claims. A single arbitrator engaged in the practice of law, who is knowledgeable about construction law and the construction business, shall be shall conduct the arbitration under the then current rules of the American Arbitration Association (AAA). The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by the AAA. The arbitration shall be conducted in the AAA regional office closest to the Community, and all expedited procedures shall apply.

14.3. Discovery in accordance with the Federal Rules of Civil Procedure shall be allowed in the arbitration (but not in the mediation) for a period of ninety (90) calendar days after the filing of the

Answer or other responsive pleading. Any discovery disputes shall be resolved by the arbitrator. The arbitrator shall only have authority to award compensatory damages and shall not have the authority to award punitive, exemplary or any other non-compensatory damages or any other form of relief. The prevailing party, as determined by the arbitrator, shall be entitled to an award of reasonable attorney's fees and costs. The arbitrator's decision and award shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction for the purpose of enforcing the arbitrator's decision. It is expressly agreed that either party may seek injunctive relief or specific performance of the obligations hereunder in an appropriate court of law or equity pending an award in arbitration.

14.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and the other party successfully stays such action and/or compels arbitration of said claims, the party filing such action shall pay the other party's costs and expenses incurred in seeking such stay and/or compelling arbitration, including reasonable attorneys' fees.

15. NOTICES. Any notice between the parties or payments pursuant to this Agreement, shall be given in writing, faxed, hand delivered or mailed by United States Mail, postage prepaid, addressed,

If to U S WEST
U S WEST Communications, Inc.
Developer Contact Group
PO Box 1720
Denver, CO 80201

and If to the DEVELOPER
The Community of Civano, LLC
Attn: Lawrence P Lamy
6280 S. Campbell Ave.
Tucson, AZ. 85706

and shall be effective as of the date received by the U S WEST Developer Contact Group. Changes by either party in the designations must comply with the above.

16. INDEMNIFICATION and LIMITATION of LIABILITIES.

16.1. The DEVELOPER shall indemnify and hold harmless U S WEST, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) actual or alleged fault or negligence of the DEVELOPER, its officers, employees, agents, sub-developers and/or representatives; (2) failure of DEVELOPER, its officers, employees, agents, sub-developers and/or representatives to comply with any term of this Agreement or any applicable local, state, or federal law or regulation, including but not limited to the Occupation Safety and Health Act and environmental protection laws; and (3) any economic damages that may arise, including damages for delay or other related economic damages that U S WEST suffer or allegedly suffer as a result of the performance or failure to perform work by the DEVELOPER.

16.2. Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT.

17. TERMINATION.

17.1. Either party may terminate this Agreement, for cause, by providing notice of such termination in writing and by certified mail to the other party. The written notice for termination for cause shall be dated as of the day it is mailed to the non-terminating party and shall provide for a reasonable opportunity (not to exceed one hundred twenty (120) days) to cure the breach. The termination shall be effective no sooner than one hundred twenty (120) calendar days from the date of notice. In the event the Arizona Corporation Commission does not approve the request for waiver in Section 3.2 above, the parties agree that this Agreement shall be of no effect and shall terminate without liability. In such event the parties agree to renegotiate terms and conditions.

17.2. Termination of this Agreement does not release either party from any liability under this Agreement, which may have accrued or which arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.

17.3. Termination pursuant to this Section makes all amounts in Section 4 Payments, immediately due and payable to U S WEST by DEVELOPER.

18. **UNCONTROLLABLE CONDITIONS.** Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; labor shortages; materials or equipment shortages; unexpected construction obstacles, unexpected equipment failures; delays by other utilities; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control. If such contingency occurs, U S WEST at its sole discretion, may extend the time for completion of specific construction work up to the length of time the contingency endured.

19. CONFIDENTIAL INFORMATION.

19.1. "Confidential Information" means the terms of this Agreement, any and all technical or business information, including third party information, furnished, in whatever tangible form or medium, or disclosed by one party ("Disclosing Party") to the other party ("Receiving Party") including, but not limited to, location of U S WEST's facilities, unit prices, plans, drawings, specifications, prototypes, computer programs, models, financial data, or any other communication reasonably related to the performance of this Agreement which the Receiving Party receives from the Disclosing Party in documents or other tangible materials clearly marked CONFIDENTIAL, or the like which disclose or describe that information, or information disclosed verbally, which is indicated at the time of discussion to be confidential and is subsequently stated in writing to be Confidential Information by the Disclosing Party.

19.2. Any Confidential Information will remain the property of the Disclosing Party.

19.3. The Receiving Party will not reproduce, publish, or disclose Confidential Information to a third party, or use it for any purpose other than performance of this Agreement, including but not limited to use in damage claims except as may be required by law, regulation, or court or agency order or demand, and then only after prompt prior notification to the other party of such required disclosure. On request, the Receiving Party will return to the Disclosing Party all copies of Confidential Information. The Receiving Party will take all reasonable precautions, including but not limited to: Informing its employees, agents, or subcontractors of the need to protect the Confidential Information; if requested by the Disclosing Party, requiring its employees, agents, and subcontractors to execute a nondisclosure agreement acceptable to the Disclosing Party; and limiting access to Confidential Information to the Receiving Party's employees, agents, and subcontractors with a need to know.

19.4. Prior to any disclosure which is permitted pursuant to subsection 21.3, the receiving party shall (if practicable) give prior notice thereof to, and consult with, the other party. If the disclosing party so directs, the receiving party shall exercise its reasonable best efforts to obtain a protective order or other appropriate remedy at the disclosing party's reasonable expense. Failing the entry of a protective order

or other appropriate remedy or receipt of a waiver from the disclosing party, the receiving party shall disclose only that portion of the Confidential Information which falls within the scope of subsection 20.3, and shall exercise its reasonable best efforts to obtain reliable assurances that confidential treatment shall be accorded to such Confidential Information.

19.5. The obligations of the parties under this Section will survive termination or expiration of this Agreement and will bind the parties, their successors, and assigns.

20. **WAIVER.** Failure to enforce or exercise any term of this Agreement or failure to exercise any option, right or privilege on any occasion or through the course of dealing, shall not be construed to be a waiver of the term, option, right or privilege by either party. For any waiver to be binding it shall be made in writing and signed by both parties.

21. **USE OF U S WEST NAME.** Neither party shall publish or use the others name or trademarks in advertising, sales promotions, or any publicity matter, nor use the other's name as a reference, without prior written approval.

22. **HEADINGS NOT CONTROLLING.** The headings of the several Sections and of the Exhibits are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

23. **COMPLIANCE WITH AGREEMENT.** The DEVELOPER hereby admits having read each and every clause of this Agreement and hereby agrees to comply with all the terms, covenants and agreements set forth herein. The terms and conditions of this Agreement shall not be modified except in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year appearing on the first page of this Agreement.

U S WEST Communications, Inc.

Vern Brankema
Authorized Signature

VERN BRANKEMA
Name Typed or Printed

DIRECTOR
Title

9/23/98
Date

The Community of Civano, LLC

Kevin M Kelly
Authorized Signature

Kevin M Kelly
Name Typed or Printed

Managing Member
Title

September 18, 1998
Date

EXHIBIT A
LEGAL DESCRIPTION

NO. 231-115-174291

PARCEL 1:

CIVANO: MASTER BLOCK FLAT, Blocks 79 through 82, a Resubdivision of Pima County, Arizona, according to the map of record in the office of the County Recorder in Book 50 of Maps, page 36:

Excepting therefrom that portion conveyed to the City of Tucson by Deed recorded November 3, 1997 in Docket 10664, Page 1992; and

Further excepting therefrom any portion lying within Lots 1 through 165 and Common A, B and C of CIVANO I, a Resubdivision of Pima County, Arizona, according to the map of record in the office of the County Recorder in Book 50 of Maps, Page 56.

PARCEL 2:

Lots 1 through 165 and Common Areas A, B, C of CIVANO I, a Resubdivision of Pima County, Arizona, according to the Map of record in the County Recorder in Book 50 of Maps, Page 56.

EXCEPTING THEREFROM the following described property:

A portion of common Area "A" lying Westerly of the Northwestern corner of Lot 165 of CIVANO I, Lots 1 thru 165 and Common Area A thru C, according to the plat recorded in Book 50 of Maps and Plats at Page 56, records of Pima County, Arizona, described as follows:

BEGINNING at the Northwestern corner of said Lot 165, said point being at the intersection of the Southerly right-of-way line of Seven Generation Way and the Easterly line of Common Area "A" according to said plat of CIVANO I:

Thence South 00 degrees 00 minutes 30 seconds East 50.00 feet;

Thence South 89 degrees 29 minutes 04 seconds West 50.00 feet;

Thence North 00 degrees 00 minutes 30 seconds West 20.00 feet;

Thence North 89 degrees 29 minutes 04 seconds East 25.00 feet;

Thence North 00 degrees 00 minutes 30 seconds West 30.00 feet, to a point on the South right-of-way Seven Generation Way;

Thence North 89 degrees 29 minutes 04 seconds East along said South right-of-way a distance of 25.00 feet to the POINT OF BEGINNING.

AND FURTHER EXCEPTING THEREFROM the following described property:

A portion of Lot 165 of CIVANO I, Lots 1 thru 165 and Common Areas A thru C according to the plat recorded in Book 50 of Maps and Plats at Page 56, Records of Pima County, Arizona, described as follows:

BEGINNING at the Northwestern corner of said Lot 165, said point being at the intersection of the Southerly right-of-way line of Seven Generations Way and the Easterly line of Common Area "A", according to said plat of CIVANO I;

Thence North 89 degrees 29 minutes 04 seconds East along said Southerly right-of-way line a distance of 101.05 feet, to the point of curvature of a tangent curve, concave Southwesterly;

Then Southeasterly, along the arc of said curve to the right, having a radius of 18.00 feet and a central angle of 57 degrees 23 minutes 59 seconds, for an arc distance of 18.03 feet to a point of tangency;

Thence South 33 degrees 06 minutes 57 seconds East, 109.89 feet, to the point of curvature of a tangent curve, concave Westerly;

Thence Southerly, along the arc of said curve to the right, having a radius of 156.00 feet and a central angle of 32 degrees 36 minutes 01 seconds, for an arc distance of 88.76 feet, to a point of tangency;

Thence South 00 degrees 30 minutes 56 seconds East, 25.30 feet;

Thence South 89 degrees 59 minutes 30 seconds West, 251.85 feet to the Westerly line of said Lot 165;

Thence North 00 degrees 00 minutes 30 seconds West along said Westerly line of distance of 158.00 feet;

Thence North 89 degrees 29 minutes 04 seconds East, 50.00 feet;

Thence North 00 degrees 00 minutes 30 seconds West, 50.00 feet, to the POINT OF BEGINNING.

EXHIBIT B **BUILD OUT SCHEDULE**

Phase	1998				1999				2000				Phase Total
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
N1P1	0	0	0	0	31	31	30	0	0	31	31	28	92
N1P2					0	0	1	31	31	8	8	18	153
N1P3								0	8			0	42
N2												0	0
N3												0	0
N4													
MFR									16	17	17	17	67
CTL									1	5	5	5	16
Qtr Total	0	0	0	0	31	31	31	31	56	61	61	68	370
Yr Total				0				124				248	

Phase	2001				2002				2003				Phase Total
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
N1P1	45	32	0	0	0	36	40	54	54	47	45	38	0
N1P2	0	10	45	40	0	0	0	5	5	5	6	5	0
N1P3	0	0	0	0	0	0	0	0	0	0	0	0	77
N2	7	22	22	22	22	22	22	22	22	22	22	22	445
N3	17	17	17	17	17	17	17	17	18	18	18	18	25
N4	5	4											249
MFR													208
CTL													9
Qtr Total	74	85	84	79	75	75	79	98	99	92	90	83	1,013
Yr Total				322				327				364	

EXHIBIT B BUILD OUT SCHEDULE

Phase	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	2006 1st-4th Qtr	2007 1st-4th Qtr	2008 1st-4th Qtr	Phase Total	Project Total
N1P1												0	92
N1P2												0	153
N1P3												0	119
N2												0	445
N3	33	30	30	30	30	30	30	30	110	110	110	573	598
N4	19	0	0	0								19	268
MFR	18	18	18	18	18	18	18	18	72	72	60	348	623
CTL													25
Qtr Total	70	48	48	48	48	48	48	48	182	182	170	940	2323
Yr Total				214				192					